

REMARKS

This responds to the Office Action mailed on February 26, 2008.

Claims 1-5 and 20-22 are amended, no claims are canceled or added; as a result, claims 1-22 remain pending in this application.

Interview Summary

Applicant thanks Examiner **Andrew Kim** and Examiner **John Hotaling** for the courtesy of a personal interview on July 22, 2008 with Applicant's representative **Rodney Lacy** and **Michael Blankstein**. The randomly generated seed value element was discussed. No agreement regarding the status of the claims was reached.

§102 Rejection of the Claims

Claims 1-3, 5-8, 10-11, 13-15 and 17-22 were rejected under 35 U.S.C. § 102(e) for anticipation by Martinek et al. (U.S. Patent 7,043,641). A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *M.P.E.P* § 2131. To anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipating subject matter. *PPG Industries, Inc. V. Guardian Industries Corp.*, 75 F.3d 1558, 37 USPQ2d 1618 (Fed. Cir. 1996). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim*.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). Applicant respectfully traverses the rejection because s claims 1-3, 5-8, 10-11, 13-15 and 17-22 recite elements not found in Martinek. As a result, Martinek does not anticipate claims 1-3, 5-8, 10-11, 13-15 and 17-22.

Claim 1 as amended recites “forming a first authentication data set, which includes an encrypted version of a first software program component combined with a seed value.” Claim

21 is a computer-readable medium claim reciting similar elements to claim 1. With respect to a seed value, the Office Action asserts that Martinek, at column 5, line 20 to column 6, line 10 discloses “forming a first message digest, which includes an encrypted version of a first software program component combined with a seed value.” Applicant respectfully disagrees with this interpretation of Martinek. Applicant notes that the cited section of Martinek discloses the use of hash functions, digital signatures, and public/private key encryption. Hash functions, digital signatures and public/private key encryption are not the same as, and do not involve or inherently disclose the concept of combining a seed value with a software program component (although such functions may be applied to the combined seed value and software component). The seed value as described in Applicant’s specification is a value that is appended to a software component, and is useful in some embodiments to prevent “a would-be attacker (who managed to discover the message digest expected from the particular gaming software/data component) from manipulating the authentication process by deceiving the jurisdiction data integrity server 487 into believing that an unauthentic gaming software/data component installed on the gaming terminal is authentic” (see e.g., specification at page 64, lines 6-11). Martinek does not disclose such a seed value, and in fact does not use the term “seed value” or any equivalent.

Further, claims 1 and 21 as amended recite “transmitting the seed value over a communication network to a gaming terminal” and comparing a first authentication data set to a second authentication data set, where the first and second authentication data set are formed using the software component and the seed value. Because Martinek does not disclose seed values, Martinek cannot disclose transmitting a seed value to a gaming terminal or comparing authentication data sets formed using a seed value.

For all of the reasons above, Martinek does not disclose each and every element of claims 1 and 21 as amended. As a result, Martinek does not anticipate claims 1 and 21. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 1 and 21.

Claims 2-3 depend from claim 1 and therefore inherit the elements of claim 1, including elements reciting the use of a seed value in combination with a software component. Claims 2-4 are therefore not anticipated by Martinek for at least the reasons discussed above regarding claim 1.

Additionally, claim 3 recites that the seed value is generated using a random number generator. Martinek does not disclose randomly generated seed values. Martinek merely discloses that a random number generator may be component that is used to generate random outcomes (events) for a wagering game, that the random number generator may be a component that may be segregated from other code (see e.g., column 3, lines 24-31) and that a random number generated module may be independently verified (see e.g., column 10, lines 19-27). Martinek does not disclose a seed value, and further does not disclose a randomly generated seed value. As a result, Martinek does not anticipate claim 3. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claim 3.

Claim 5 as amended recites “upon determining the copy of the executable gaming software program stored at the gaming terminal is not authentic, gathering forensic data associated with the operation of the executable software program.” Applicant has reviewed Martinek, and can find no disclosure of gathering forensic data upon determining that a software program is not authentic. Therefore Martinek does not anticipate claim 5 as amended. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claim 5.

Claims 6-8 depend either directly or indirectly from claim 5 and therefore inherit the elements of claim 5. Claims 6-8 are therefore allowable for at least the same reasons as discussed above regarding claim 5. Additionally, claims 6-8 recite elements related to a seed value, which as discussed above, is not disclosed in Martinek.

Claim 10 recites “forming a first message digest, which includes an encrypted version of a first software program component combined with a seed value” and “transmitting the seed value over a communication network to a gaming terminal.” As discussed above regarding claim 1, Martinek does not disclose combining a seed value with a software program component or transmitting a seed value to a gaming terminal. Therefore Martinek does not disclose each and every element of claim 10. As a result, Martinek does not anticipate claim 10. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claim 10.

Claims 11 and 13 depend from claim 10 and therefore inherit the elements of claim 10. Claims 11 and 13 are therefore allowable for at least the same reasons as discussed above regarding claim 10.

Additionally, claim 11 recites that the seed value is generated by a random number generator. As discussed above, Martinek merely discloses using a random number generator to generate outcomes for a wagering game, and that the random number generator may be a segregated code component that may be verified. Martinek does not disclose a randomly generated seed value that is appended to a software program component. Therefore Martinek does not disclose each and every element of claim 11 and thus fails to anticipate claim 11. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claim 11.

Claims 14, 17, 20 and 22, like claims 1, 3, 10 and 11, recite elements related to seed values, randomly generated seed values, and combining or appending seed values with software programs. As discussed above, Martinek does not disclose such elements. Therefore claims 14, 17, 20 and 22 are not anticipated by Martinek for the same reasons as discussed above regarding claims 1, 3, 10 and 11. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 14, 17, 20 and 22.

Claim 15 depends from claim 14, and claims 18-19 depend from claim 17. These dependent claims inherit the elements of their respective base claims, including elements related to seed values, randomly generated seed values and transmitting seed values. Therefore these dependent claims are not anticipated by Martinek for at least the same reasons as discussed above regarding their respective base claims 14 and 17, and claims 1, 3, 10 and 11.

§103 Rejection of the Claims

Claims 4, 9, 12 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Martinek et al. (U.S. Patent 7,043,641). The determination of obviousness under 35 U.S.C. § 103 is a legal conclusion based on factual evidence. *See Princeton Biochemicals, Inc. v. Beckman Coulter, Inc.*, 411 F.3d 1332, 1336-37 (Fed.Cir. 2005). The legal conclusion that a claim is obvious within § 103(a) depends on at least four underlying factual issues set forth in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966). The underlying factual issues set forth in *Graham* are as follows: (1) the scope and content of the prior art; (2) differences between the prior art and the claims at issue; (3) the level of ordinary skill in the pertinent art; and (4) evaluation of any relevant secondary considerations.

The Examiner has the burden under 35 U.S.C. § 103 to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir.1988). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested, by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974) ; M.P.E.P. § 2143.03. "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970) ; M.P.E.P. § 2143.03. As part of establishing a *prima facie* case of obviousness, the Examiner's analysis must show that some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead an individual to combine the relevant teaching of the references. *Id.* To facilitate review, this analysis should be made explicit. *KSR Int'l v. Teleflex Inc., et al.*, 127 S.Ct. 1727; 167 L.Ed 2d 705; 82 USPQ2d 1385 (2007) (citing *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006)).

Each of claims 4, 12 and 16 depends from a claim that recites using a seed value appended or combined with a software program as part of an authentication process. As discussed above, Martinek does not disclose any seed value elements. Therefore there are significant differences between Martinek and claims 4, 12 and 16. As a result, claims 4, 12 and 16 are not obvious in view of Martinek. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claims 4, 12 and 16.

Claim 9 depends indirectly from claim 5, and therefore inherits the amended element of "upon determining the copy of the executable gaming software program stored at the gaming terminal is not authentic, gathering forensic data associated with the operation of the executable software program." As discussed above, Martinek does not disclose the recited language. Therefore there are significant differences between claim 9 and Martinek. As a result, claim 9 is not obvious in view of Martinek. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claim 9.

RESERVATION OF RIGHTS

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art.

CONCLUSION


Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at (612) 373-6954 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,


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Date August 26, 2008

By 
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 26th day of August 2008.

CHERYL L. DANKERS
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Signature